

takes precedence.⁴⁹ The introduction of new technologies has not dramatically altered diversity.⁵⁰

Empirical evidence clearly suggests that concentration in media markets has a negative effect on diversity.⁵¹ Greater concentration results in less diversity, while diversity of ownership across geographic, ethnic and gender lines is associated with diversity of programming.⁵²

Journal, 1990; A. S. Dejong and B. J. Bates, "Channel Diversity in Cable Television," Journal of Broadcasting and Electronic Media, 1991; A. E. Grant, "The Promise Fulfilled? An Empirical Analysis of Program Diversity on Television," The Journal of Media Economics, 1994. R. H. Wicks and M. Kern, "Factors Influencing Decisions by Local Television News Directors to Develop New Reporting Strategies During the 1992 Political Campaign," Communications Research, 1995; Motta Massimo and Michele Polo, "Concentration and Public Policies in the Broadcasting Industry," Lubunski, Richard, "The First Amendment at the Crossroads: Free Expression and New Media Technology," Communications Law and Policy, Spring 1997.

⁴⁹ V. E. Ferrall, "The Impact of Television Deregulation," Journal of Communications, 1992, p. 26; K. C. Loudon, "Promise versus Performances of Cable," in W.H. Dutton, et al., Wired Cities: Shaping the Future of Communications (Boston, K.G. Hall, 1987).

⁵⁰ A. S. Dejong and B. J. Bates, "Channel Diversity in Cable Television," Journal of Broadcasting and Electronic Media, 1991; A. E. Grant, "The Promise Fulfilled? An Empirical Analysis of Program Diversity on Television," The Journal of Media Economics, 1994.

⁵¹ W. R. Davie and J.S. Lee, "Television News Technology: Do More Sources Mean Less Diversity," Journal of Broadcasting and Electronic Media, 1993, p. 455; H. J. Levin, "Program Duplication, Diversity, and Effective Viewer Choices: Some Empirical Findings," American Economic Review, 1971; S. Lacy, "A Model of Demand for News: Impact of Competition on Newspaper Content," Journalism Quarterly, 1989. T. J. Johnson and W. Wanta, "Newspaper Circulation and Message Diversity in an Urban Market," Mass Communications Review, 1993; W. Wanta and T. J. Johnson, "Content Changes in the St. Louis Post-dispatch During Different Market Situations," Journal of Media Economics, 1994; D. C. Coulson, "Impact of Ownership on Newspaper Quality," Journalism Quarterly, 1994; D. C. Coulson and Anne Hansen, "The Louisville Courier-Journal's News Content After Purchase by Gannet," Journalism and Mass Communications Quarterly, 1995; Iosifides, Petros, "Diversity versus Concentration in the Deregulated Mass Media," Journalism and Mass Communications Quarterly, Spring 1999.

⁵² M. Fife, The Impact of Minority Ownership on Broadcast Program Content: A Case Study of WGPR-TV's Local News Content (Washington, D. C., National Association of Broadcasters), 1979; M. Fife, The Impact of Minority Ownership on Broadcast Program Content: A Multi-Market Study (Washington, D. C., National Association of Broadcasters), 1986; Congressional Research Service, Minority Broadcast Station Ownership and Broadcast Programming: Is There a Nexus? (Washington, D.C., Library of Congress), 1988; T. A. Hart, Jr., "The Case for Minority Broadcast Ownership," Gannet Center Journal, 1988; K. A. Wimmer, "Deregulation and the Future of Pluralism in the Mass Media: The Prospects for Positive Policy Reform," Mass Communications Review, 1988; T. G., Gauger, "The Constitutionality of the FCC's Use of Race and Sex in Granting Broadcast Licenses," Northwestern Law Review, 1989; H. Klieman, "Content Diversity and the FCC's Minority and Gender Licensing Policies," Journal of Broadcasting and Electronic Media, 1991; L. A. Collins-Jarvis, "Gender Representation in an Electronic City Hall: Female Adoption of Santa Monica's PEN System," Journal of Broadcasting and Electronic Media, 1993; Lacy, Stephen, Mary Alice Shaver, and Charles St. Cyr, "The Effects of Public Ownership and Newspaper Competition on the Financial Performance of Newspaper Corporation: A Replication and Extension," Journalism and Mass Communications Quarterly, Summer 1996.

The shift toward greater reliance on economic forces has not resulted in greater competition and has resulted in greater concentration in the many markets.⁵³ Greater concentration results in less competition.⁵⁴ There is evidence of the anticompetitive behaviors expected to be associated with reductions in competition, such as price increases and excess profits.⁵⁵

The shift toward greater reliance on economic forces has produced considerable evidence that the market will reduce public interest and culturally diverse programming.⁵⁶ News and

⁵³ Bagdakian, pp. ix-x; J. G. Blumer and C. Spicer, "Prospects for Creativity in the New Television Marketplace: Evidence from Program Markets," Journal of Communications, 1990; H. Boyte and S. M. Evans, Free Spaces: The Source of Democratic Change in America (New York, Harper and Rowe, 1986); W. H. Melody, "The Information in I. T.: Where Lies the Public Interest?", Intermedia, 1990a; W. H. Melody, "Communication Policy in the Global Information Economy: Wither the Public Interest?", In M. Furgeson (Ed.), Public Communication: The New Imperatives, (London: Sage, 1990); R. M. Entenman, Democracy Without Citizens (New York: Oxford, 1989); D. A. Graber, Mass Media and American Politics (Washington, D.C., Congressional Quarterly Press, 1993). H. H. Howard, "TV Station Group and Cross-Media Ownership: A 1995 Update," Journalism and Mass Communications Quarterly, 1995.

⁵⁴ S. Lacy, "The Effects of Intracity Competition on Daily Newspaper Content," Journalism Quarterly, 1987; S. Lacy, et al., "Cost and Competition in the Adoption of Satellite News Gathering Technology," Journal of Media Economics, 1988; S. Lacy, et al., "Competition and the Allocation of Resources to Local News," Journal of Media Economics, 1989; S. Lacy, et al., "The Relationship among Economic, Newsroom and Content Variables: A Path Analysis," Journal of Media Economics, 1989; D. L. Lasorsa, "Effects of Newspaper Competition on Public Opinion Diversity," Journalism Quarterly, 1991; S. Lacy and J. M. Bernstein, "The Impact of Market Size on the Assembly cost of Local Television News," Mass Communications Review, 1992; J. P. Vermeer, "Multiple Newspapers and Electoral Competition: A County-Level Analysis," Journalism and Mass Communications Quarterly, 1995, p. 104.

⁵⁵ M. O. Wirth, "The Effects of Market Structure on Television News Pricing," Journal of Broadcasting, 1984; J. Simon, W. J. Primeaux, and E. Rice, "The Price Effects of Monopoly Ownership in Newspapers," Antitrust Bulletin, 1986; W.B. Ray, "FCC: The Ups and Downs of Radio-TV Regulation (Iowa: Iowa State University Press, 1990); R. Rubinovitz (Market Power and Price Increases for Basic Cable Service Since Deregulation, (Economic Analysis Regulatory Group, Department of Justice, August 6, 1991); B. J. Bates, "Station Trafficking in Radio: The Impact of Deregulation," Journal of Broadcasting and Electronic Media, 1993.

⁵⁶ V. A. Stone, "Deregulation Felt Mainly in Large-Market Radio and Independent TV," Communicator, April, 1987, p. 12; P. Aufderheide, "After the Fairness doctrine: Controversial Broadcast Programming and the Public Interest," Journal of communication (1990), pp. 50-51; M. L. McKean and V. A. Stone, "Why Stations Don't Do News," Communicator, 1991, pp. 23-24; V. A. Stone, "New Staffs Change Little in Radio, Take Cuts in Major Markets TV," RNDA, 1988; K. L. Slattery and E. A. Kakanen, "Sensationalism Versus Public Affairs Content of Local TV News: Pennsylvania Revisited," Journal of Broadcasting and Electronic Media, 1994; J. M. Bernstein and S. Lacy, "Contextual Coverage of Government by Local Television News," Journalism Quarterly, 1992; R. L. Carrol, "Market Size and TV News Values," Journalism Quarterly, 1989; D. K. Scott and R. H. Gopbetz, "Hard

public affairs programming is particularly vulnerable to these economic pressures.⁵⁷ As market forces grow, this programming is reduced.⁵⁸ The quality of the programming is also compromised.⁵⁹ Thus the concern about the impetus for commercial activity provided by the new business model for digital TV is well founded in past experience with the broadcast and news media.

For example, in comments submitted separately in this proceeding, consumer organizations from throughout the country have identified a range of serious problems with the quality and breadth of local programming, including: the lack of in-depth coverage of significant consumer, disability and racial diversity issues [Massachusetts Consumer Coalition; Harlem Consumer Education Council]; unwillingness by local television broadcasters to run Public Service Announcements frequently and at times when most viewers will see them [Illinois Public Interest Research Group; Columbia Consumer Education Council]; the elimination of community ascertainment requirements and station community relations departments [Consumer Action], and the lack of programming dealing in-depth with issues of importance to particular geographic and/or racial and ethnic communities [Harlem Consumer Education Council, Arizona Consumer Council].

News/Soft News Content of the National Broadcast Networks: 1972-1987," Journalism Quarterly, 1992; Washburn, op. cit, p. 75; Ferrall, pp. 21... 28... 30.

⁵⁷ J. H. McManus, "What Kind of a Commodity is News?", Communications Research, 1992; Olson, op. cit.

⁵⁸ Bagdakian, pp. 220-221; D. L. Paletz and R. M. Entmen, Media, Power, Politics, (New York, Free Press, 1981). N. Postman, Amusing Ourselves to Death: Public Discourse in the Age of Show Business (New York Penguin Press, 1985); S. Lacy, "The Financial Commitment Approaches to News Media Competition," Journal of Media Economics, 1992.

⁵⁹ B. R. Litman, "The Television Networks, Competition and Program Diversity," Journal of Broadcasting, 1979; B. R. Litman and J. Bridges, "An Economic Analysis of Daily Newspaper Performance," Newspaper Research Journal, 1986; J. C. Buterna, "Television Station Ownership Effects on Programming and Idea Diversity: Baseline Data," Journal of Media Economics, 1988; J. Kwitny, "The High Cost of High Profits," Washington Journalism Review,

The manner in which the spectrum was rationed out has also raised concerns about it limiting diversity in the marketplace of ideas.⁶⁰ Consumer advocates argue that serving diverse interests within a community is both good business and good public policy.⁶¹ They argue that the extra capacity provided by digital transmission be used for free time for political candidates, increased children's educational programming, and public slots for independent civic discourse.⁶²

C. Public Policy Recommendations

One suggestion that has been made is to make broadcasters exchange new digital spectrum for increased public interest obligations,⁶³ possibly including some programming directed towards typically neglected population groups. Another approach would be for the FCC to institute minimum public interest requirements for Digital TV broadcasters in the areas of public service announcements and public affairs programming.⁶⁴

V. THE ROLE OF LOCAL BROADCASTING IN THE IMPLEMENTATION OF DIGITAL TV

From the point of view of television itself, local broadcasting will play a vital role in the distribution of programming. Therefore, it can play a vital role in the distribution of solutions to

1990; A. Powers, "Competition, Conduct, and Ratings in Local Television News: Applying the Industrial Organization Model," Journal of Media Economics, 1993.

⁶⁰ Media Access Project. *Digital TV and the Spectrum Grab of 1997*

⁶¹ *Picture This: DTV and the Future of Television*; www.benton.org/Policy/TV/digital.html.

⁶² Media Access Project. *Digital TV and the Spectrum Grab of 1997*

⁶³ Sohn, Gigi. *Pretty Pictures or Pretty Profits: Issues and Options for the Public Interest and Nonprofit Communities in the Digital Broadcasting Debate*

programming problems. Ensuring cultural diversity and socially relevant programming is a matter of local programming to meet community needs.

Many aspects of the use of personal information to market and sell goods are governed by private, corporate decisions. Federal or national policy on marketing is very “thin.” Individual corporations decide how they will market their goods and services. When they make a decision to gather information about customers, to sell directly, or advertise on specific types of programs, they are private decisions. These decisions can and should be influenced by the publics that are affected. Public reaction against a specific type of advertising or marketing practice can influence choices. In broadcast, local input should influence those corporate marketing decisions since the public is so directly affected by what are likely to be much more intrusive selling tactics.

The gathering and compilation of viewer information will be a local matter – with information gathered in the set top box and compiled by the local cable operator or the local broadcaster. It is highly likely that the local station will be the one that controls the information for marketing purposes.

From the point of view of governance, it is easier for citizens to become directly involved in solutions at the local level.

Local broadcasting is also an obvious means for the expression of social, cultural and political ideas by individuals. Local facilities are geographically accessible to individuals.

Thus, local broadcasting appears to be a natural point of entry for public policy discussion. Moreover, from the point of view of public policy, local broadcasting has a long-standing obligation to promote the public interest because of its institutional nature. Local

⁶⁴ *Picture This: Digital TV and the Future of Television*; www.benton.org/Policy/TV/digital.html

broadcasters will use digital spectrum to distribute the majority of the most watched programming. They actually control the spectrum that has been given to them. Indeed, it may be foolish to think that there is one federal policy that can solve these problems. There should be many local policies.

There is one step that is necessary at the federal level, however. Because the allocation of spectrum was a federal act, federal action is necessary to ensure that local use of the spectrum will be responsive to local demands. Federal regulators have the authority to require local broadcasters to be responsive to local needs, provide access to local programming, and work out privacy policy in response to local values. If there is no federal obligation to promote these public policy goals, local broadcasters are likely to resist because they will be caught up in the whirlwind of commercial forces that the new technology and federal policy has created.

VIII. CONCLUSION

The FCC's NOI on the public interest obligations of digital licensees comes none too soon. The economic, social and political implications of the transformation of television are extremely broad. The transformation of TV represents a major change in the commercial nature of the industry that requires aggressive policy to promote the public interest. If this public policy does not address the economic and consumer consequences of this technology, it will have failed. The FCC should expand its NOI to consider, at a minimum, implications for consumer privacy and abusive advertising. More broadly, the FCC should oversee the transition to digital television with the following essential public policy goals in mind:

- ◆ Public policy should seek compensation for the use of the broadcast spectrum, which remains a remarkably valuable input into the production of broadcast television.

- ◆ Public policy should seek to balance the powerful forces driving the commercialization of the TV industry by promoting culturally diverse programming that may not be commercially attractive but that is educational and uplifting.
- ◆ Public policy should seek to ensure that this new more powerful medium does not result in the abuse of political power by those who control it.
- ◆ Public policy should seek to ensure that the deployment of digital TV does not make the digital divide worse but ensures that policies to improve access help to reduce the divide.

3



Lulac Foundation, Inc.

March 23, 2000

The Honorable Chairman William E. Kennard
Federal Communications Commission
445 Twelfth Street, S. W.
Washington, D.C. 20554

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Attn: Ms. Magalie Roman Salas, Office of the Secretary

Re: In the Matter of Public Interest Obligations of TV Broadcast
Licensees MM Docket No. 99-360

Dear Mr. Chairman:

I am writing on behalf of the League of United Latin American Citizens (LULAC), and the LULAC Foundation. LULAC is the nation's oldest and largest Hispanic civil rights organization with 115,000 members throughout the U.S. and Puerto Rico and we would like to congratulate the Federal Communications Commission (FCC) for issuing a Notice of Inquiry (NOI) regarding the public interest obligations of digital broadcasters. This is an important first step in determining what the public can expect from television broadcasters in exchange for the free use of the airwaves. We are particularly interested in issues of diversity as they affect ownership, employment, programming and the accountability of local television stations to all of the members of the community they are licensed to serve.

The mission of the League of United Latin American Citizens (LULAC), has long been to advance the economic condition, educational attainment, political influence, health and civil rights of the Hispanic population of the United States. Since it was founded in 1929, LULAC has helped Hispanics/Latinos move toward full participation in American business and American democracy. LULAC assisted Latinos to acquire U.S. citizenship, defend their civil rights, and build political strength. We won landmark Supreme Court decisions that outlawed the poll tax and prohibited the segregation of Hispanic children in the public schools. When Mexican-Americans returned from service during World War II, LULAC helped them to secure their benefits and supported a transition to civilian life that began with new educational opportunities. Whether the transition was from field to factory, or industry to information, LULAC has been at the forefront of organizations determined to insure that no American is left behind in this transition. The current transition to digital communications is a major national shift, and given the importance of television in our society, and the merging of television and the computer,

digital television may well be at the center of this important transition. It will certainly have an impact on economic development and educational opportunity. We emphasize that it is important that the entire nation -- rich and poor, black and white, Latino and Native American, consumer and citizen -- all of us must make this transition to the digital age together.

LULAC has actively participated in numerous FCC proceedings since the early 1960's. Its petitions, briefs, and motions to deny have primarily focused on employment rights, the need for diversity in ownership, and the importance of programming which addresses the needs of minority communities. We feel that all too often, despite the merit of our cause, we have fought largely a losing battle. We simply cannot muster the financial and political strength enjoyed by the broadcast industry, given their great advantage inherent in their control of the airwaves. We have found the FCC at times to be sympathetic, but otherwise powerless or unwilling to accept its role as the protector and advocate of the "public interest."

LULAC has joined People for Better TV because we understand that no other medium — not newspapers, not radio, not cable, and certainly not the Internet — has as powerful an impact on communities in the U.S. as television. When asked where they get their information the vast majority of Americans consistently point to local television news. Hispanic respondents in a national survey by the Tomas Rivera Policy Institute (TRPI) reported nearly identical TV ownership as non-Hispanic whites with over 99 percent of their households having at least one TV, and an average of 2.3 televisions per household. Content studies of local news continue to reveal a focus on urban crime, particularly violent crime committed by minorities. Over 60% of Hispanics polled said they felt Latinos are more likely to be portrayed as being violent on English-language TV than on Spanish-language TV. Latinos also said they believe English-language TV tends to be more violent than Spanish-language television (*Tomas Rivera Policy Institute*). Recent studies also show that this myopic reporting reinforces racist beliefs, and drives people out of urban areas, undermining the economic health of cities. No one doubts the importance of television. Now we have an opportunity to make sure that television's future improves upon television's past and present.

LULAC councils throughout the United States and Puerto Rico are concerned about the way in which television serves their communities. . The LULAC Foundation recently invited LULAC members in Phoenix, Houston, Los Angeles, Chicago, and Washington, D.C. to comment on television in their area. In Houston and Phoenix LULAC members joined People for Better TV activists to monitor the programming of local broadcasters, visit television stations, and review the public records. LULAC members in Houston, and Phoenix offered these perspectives on television in their communities:

Carlos Calbillo is Director of the Video/Film Program for Talento Bilingue de Houston. In a memo detailing his recent visits to Houston broadcasters he comments that Houston broadcasters have drastically reduced their public affairs and community programming, claiming to meet their public interest responsibilities through programming produced as part of their regular news department operations. Mr.

Calbillo argues that news stories are increasingly sensationalistic and that there are relatively few stories on the positive aspects of a community.

"My argument is verified by the public file, where one can see that the station will state that they have addressed the issue of "crime" by a 6pm sensationalistic news segment on carjacking, or that a 10pm news blurb on back alley abortions satisfies their covering BOTH a "un-wed mothers" and a "crime and youth" requirement." (*Carlos Calbillo*)

Further, Mr. Calbillo questions the manner in which broadcasters conduct community ascertainment. He questions the extent to which participants in the ascertainment process are truly representative of the community and the extent to which the station allows them to engage in a meaningful dialogue about the issues which they see as important. "The invitees are overwhelmingly elected or appointed public officials; and while they presumably would have a handle on the issues, they are arguably removed from day-to-day knowledge of specific communities and specific community problems."

Johnny N. Mata chairs the Media Relations and Communications committee for LULAC District 18. Mr. Mata notes the clear and steady decline in commitment to public affairs programming by KHOU-TV, Channel 11 (CBS). Until about 1985, KHOU offered *Ola Amigos* as a weekly program serving Hispanics. In 1992, the station announced a new program, *First Sunday* which would serve all minority communities once a month. First Sunday aired until 1996 and Mr. Mata tells us that no other program has been offered by this station to address the needs of diverse communities in Houston. Mr. Mata goes on to say that KPRC-TV Channel 2 (NBC) has also eliminated its' Hispanic public affairs program and that KTRH-TV Channel 13 (ABC) has consolidated public service programming combining *Viva Houston*, *Crossroads*, *Vision-Asian*, and *County Line*, into one weekly thirty-minute program.

Julia Zozaya is a LULAC member from Phoenix, AZ and formerly served as the organization's first National Vice-President for Women. In a recent letter to People for Better TV she writes about her concerns over the high cost of equipment to access video descriptive services and of how few broadcasters offer this service. She writes that the only broadcaster she is aware of offering the service in her area is Channel 8, the local PBS broadcaster. She is concerned that a transition to digital technology in her area will mean buying new equipment, an expense she says many who are blind cannot afford.

Ms. Zozaya is troubled by the depiction of Latinos on television. "I am concerned that the broadcasters in my area do not fairly represent Latinos or women on television. I believe that broadcasters should do more to reach out to diverse populations as way to better serve the communities which they are licensed to serve." She goes on to write, "I previously owned a radio station and we made special efforts to reach out to diverse communities. I do not see television stations making an effort to provide real community programming responsive to the day-to-day realities in our neighborhoods."

Clearly, local television stations across the country can do better. As Congress made clear in 1996, these businesses are the beneficiaries of free federal licenses in exchange for their agreement to operate in the public interest. Somehow, too many public trustees believe they can ignore part of the public.

Contrary to what many may think, the airwaves still belong to the American people, all of them. Those few who are licensed by the FCC to broadcast television signals are authorized to do so "in the public interest." We would argue that the "public interest," is the motivating factor that justifies the license, not the amount of the broadcaster's profits. We believe that Congress, the courts, and the FCC have at times confused the two.

LULAC is concerned that there are not enough Latinos in decision-making positions within the broadcast industry and that local broadcasters are not sufficiently responsive to local Latino concerns, issues and interests. We propose that the Commission immediately begin a rule making proceeding to require all digital television broadcasters to report on their web sites job opportunities, and, if their workforce, including management, fails to comprise at least half of the makeup of the community of license, the broadcasters should report to the community through their web site on how they plan to achieve a more diverse workplace.

LULAC is concerned that the images of Latinos on television and in the entertainment industry do not accurately reflect who we are as vital and productive members of American society. We propose that the Commission immediately begin a rule making proceeding to require all local broadcasters to invite comments from a broad range of leading organizations in their community to ascertain the issues important to that community. These comments should be made available for public review on the station's web site. The local broadcasters should then be required to demonstrate on this same web site what programs they are airing to address the ascertained local issues. Broadcasters should also make clear the means which they employed to solicit comments.

LULAC is concerned that all Americans are served fairly and equally as broadcasters deploy digital technology in television. We propose that the Commission immediately begin a rulemaking proceeding to require all broadcasters to make emergency and disaster related information available in a variety of languages appropriate to the communities they are licensed to serve. While English may not be the dominant language, for many immigrants, English-language television is the primary source of news, weather, and emergency information. We believe that broadcasters could reasonably be required to scroll emergency information across the bottom of television screens which would help to alert non-English speakers of life-saving instructions.

Broadcasters have long argued that the limits of the broadcast day made it impossible to put on more programs addressing the concerns of different segments of their audience. Digital television broadcasters have the ability to send much more information, and more channels, than standard analog broadcasts. Why not use that ability to provide more service to a more diverse audience? Why not use that ability to

put on programs about the local needs and interests of minority communities at a time when those programs can be seen?

There are several ways the flexibility of digital broadcasts might better serve the needs of their communities of license. Commercial broadcast stations might multicast to make programs accessible. Programs once available only on Sunday morning might now be available at a time when a larger audience can see the program. A commercial broadcaster might serve the local community by making one of their multicast channels available for public access, educational, or government programming — much like cable. Or, borrowing again from the cable industry support of C-SPAN and Cable in the Classroom, the stations could be allowed to pay to support educational productions or public affairs programs. Another public interest service might be to provide parts of their spectrum to non-for-profit educational, health care, or community service institutions for datacasting purposes. We suggest that local broadcasters be allowed flexibility with regard to how they satisfy their obligation to operate in the public interest, but that the broadcaster be required to report regularly to the Commission and the community about how it purports to meet that public interest obligation. And, most important, that if it the broadcaster does not do something it should not be given a license. If digital television broadcasters are given free licenses in exchange for operating in the public interest, they must be truly accountable to the public.

In conclusion, these proceedings present a second chance for the commission and the broadcast industry to re-learn the lessons brought to light by the Kerner Commission Report almost 35 years ago. We feel that the findings and conclusions with respect to the broadcasting industry at that time are relevant today and we feel that each commissioner should review that report in the context of these proceedings.

We look forward to the opportunity to expand on these ideas in a proceeding to establish clear guidelines. Again, the League of United Latin American Citizens believes that such a proceeding is long past due. With councils in all of the markets now providing digital service, we would like to know what service our communities are going to receive.

Sincerely,



Eduardo Peña
LULAC Representative
to People for Better TV

cc: Commissioner Susan Ness
Commissioner Harold Furchtgott-Roth
Commissioner Michael Powell
Commissioner Gloria Tristani

4



National Association of the Deaf
814 Thayer Avenue
Silver Spring MD 20910-4500

October 25, 1999

DISABILITY ACCESS TO DIGITAL PROGRAMMING¹

Introduction

In recent years, Congress has taken bold steps to ensure access to communications technologies by individuals with disabilities. For example, in 1996, Congress enacted Section 305 of the Telecommunications Act, which, for the first time in our nation's history, requires comprehensive closed captioning of television programming. Earlier, in 1990, the Legislature enacted the Television Decoder Circuitry Act of 1990, requiring that new television technologies, including digital technologies be capable of transmitting closed captions to viewing audiences.

Consistent with the above legislative acts, broadcasters who are now entering the digital age should be required to take advantage of increased bandwidth as well as other emerging features of digital technologies that can serve to enhance access to digital TV for deaf and hard of hearing Americans. Below are a series of recommendations to expand disability access in the digital era.

¹ Much of the text contained in this statement appears in the final report released by the Gore Commission on December 18, 1998.

Closed Captioning

The Telecommunications Act of 1996 mandates that broadcast and cable programming be fully accessible through the provision of closed captioning.² Last year, the Federal Communications Commission (FCC) promulgated regulations to implement Section 305, requiring 100 percent of new television programming to be captioned over an eight year period, and 75 percent of “pre-rule” programming to be captioned over a ten year period.³ The obligation to provide captioning access will, of course, continue into the digital era. The 1990 Television Decoder Circuitry Act requires that new television technologies, such as digital technologies, be capable of transmitting closed captions.⁴ Passage of both the TDCA and Section 305 reflect Congress’ strong intent to ensure that our nation’s twenty eight million Americans who are deaf or hard of hearing continue to receive access to televised news, information, education, and entertainment in the digital age.

Digital technology will open new avenues to enhance and expand captioning access. For example, the ability to alter the size, font, color and placement of captions will enable viewers to customize their captions for enhanced viewing. In July of 1999, the FCC proposed a standard for the receipt and display of closed captions by digital television equipment. Unfortunately, as

² Section 305, Telecommunications Act of 1996, Pub. L. 104-114, 110 Stat. 56 (1996)(codified at 47 U.S.C. 613).

³ The FCC exempted certain programming from its captioning mandates. The 75 percent requirement for “pre-rule” programming refers to programming that was first exhibited or produced prior to January 1, 1998, the effective date of the FCC’s captioning rules.

⁴ Pub. L. No. 101-431, 104 Stat. 960 (1990) (codified at 47 U.S.C. 303(u), 303(b)).

drafted, this standard falls short of enabling viewers to take advantage of all of the features that new digital technologies have to offer. The proposed standard would require only one font, one size, and one stream of closed captions. In contrast, new digital technologies would enable caption viewers to fully control caption fonts, sizes, colors, and backgrounds, and would permit decoding and processing of six standard services and up to fifty seven additional extended services. Many of the new digital features are expected to provide maximum choice and quality for caption viewers, so that the captioning they enjoy in the digital age will be functionally equivalent to audio transmissions. The FCC's final digital captioning standard should enable viewers to fully exploit the versatility of these new digital technologies.

The FCC's rules on captioning currently exempt certain categories of programming, including advertisements under five minutes, certain late-night programming, and certain local non-repeat programming.⁵ In addition, the rules require only certain networks and providers to caption their news programs with real-time captioning, a method that ensures simultaneous captioning of full newscasts. The vast majority of stations are permitted to continue utilizing a lesser effective method, the electronic newsroom captioning technique (ENCT). With ENCT, viewers see text from the teleprompter for pre-scripted portions of the show. For this reason, ENCT misses significant portions of news programs, including late-breaking stories, sports and weather updates, and field reports.

The various gaps that now exist in the FCC's rules should be closed in the digital age. Captioning costs are expected to drop, as demand increases and caption technologies improve. In particular, a basic principal in the digital age should be that where obligations are imposed on

⁵ 47 C.F.R. 79.1(a)(1).

networks to provide PSAs, public affairs programming, and political discourse, there should be an accompanying obligation to caption those programs. Otherwise stated, a broadcast station should be required to provide closed captioning of all of its PSAs, public affairs programming, and political programming, to ensure that deaf and hard of hearing Americans can be part of the informed electorate.

As stations switch to digital programming, they should also be required to provide real-time captioning for all of their news programming. Section 305's mandate to provide full television access can only be met with real-time, up to the minute captioning of newscasts. Most importantly, the FCC should require all digital broadcasters to provide real-time captioning access for all televised information about emergencies and disasters.

Video Description

Section 305 of the Telecommunications Act also directed the FCC to conduct an inquiry into the provision of video description on video programming.⁶ Video description provides a verbal narration of key visual elements in a television program, to allow blind and visually disabled viewers to follow along with a program's story line. The verbal descriptions provide access to visual information such as settings, gestures, action, graphics, subtitles, and costumes. The narration is inserted into natural pauses in the program's dialogue in a manner that does not interfere with the original audio of the program. Utilization of video description as a form of providing access has been hindered by the analog standard, which only permits delivery of descriptions via the secondary audio program channel. In contrast, digital technology offers multiple audio channels, with significantly greater bandwidth, that can more easily and

⁶ Communications Act of 1934, 713(f), codified at 47 U.S.C. 613(f).

inexpensively accommodate video descriptions. Broadcasters should be required to allocate sufficient audio bandwidth for the transmission and delivery of video description in the digital age, in anticipation of expanded use of this access technology. Toward this end, the Commission should require that all digital TV receivers support simultaneous multi-channel audio-decoding capability so that descriptions can be delivered separately from a program's main audio. Such dual decoding capability will require less bandwidth – as it will not need to include the main program audio as well – and will reduce the costs of the description process by eliminating the need for professional audio mixing of sessions. Finally, the FCC should establish a schedule for digital broadcasters to begin providing video description for their programming.

Ancillary and Supplementary Services

In addition to providing high definition and/or multiple streams of television programming, new digital compression technologies promise an array of ancillary and supplementary services, including the rapid delivery of huge amounts of data, interactive educational materials, and other video subscription or non-subscription services. It is critical that the needs of individuals with disabilities not be ignored with the advent of these new technologies. The provision of these new ancillary services can open a world of opportunities for individuals with disabilities who are seeking full participation in our society. The resulting greater access in employment, education, recreation, and other areas can provide significant benefits to individuals with disabilities and to society as a whole.

Recent rules issued by the FCC to implement Section 255 of the Telecommunications Act require manufacturers and providers of telecommunications products and services to provide access to their products and services by individuals with disabilities, if readily achievable. These rules recognize that it is easier and less expensive to make products and services accessible when

they are designed with access in mind. It is a logical extension of the access laws described above to require broadcasters to provide disability access to the ancillary and supplementary applications provided over their digital television streams, where doing so would not impose an undue burden. (The undue burden standard already applies to existing closed captioning mandates.) Among other things, this would entail requiring a text option for material that is presented orally and an audio option for material otherwise presented visually. Similarly, the FCC should ensure that the provision of ancillary and supplementary services does not impinge upon the 9600 baud bandwidth currently set aside for captioning of digital programs.

Digital Equipment

Finally, the FCC and other regulatory authorities should work with set manufacturers to ensure that modifications in audio channels, decoders, and other technical areas be built to ensure the most efficient, inexpensive, and innovative capabilities for disability access. Amongst other things, this will include requiring DTV manufacturers to take full advantage of new digital technologies, so that viewers are able to control the font, size, color, placement, and other characteristics of closed captions.

Statement submitted by:

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National Association of the Deaf,

Prior Member, Advisory Committee on Public Interest Obligations of Digital
Television Broadcasters ("Gore Commission")

Joined by:

American Association of the Deaf-Blind

American Athletic Association of the Deaf

American Deafness and Rehabilitation Association

American Society for Deaf Children

American Speech-Language-Hearing Association

Association of College Educators: Deaf and Hard of Hearing
Association of Late Deafened Adults
The Caption Center (WGBH)
Conference of Educational Administrators Serving the Deaf, Inc.
Convention of American Instructors of the Deaf
Deaf Women United, Inc.
Gallaudet University Alumni Association
Jewish Deaf Congress
League for the Hard of Hearing
National Association of the Deaf
National Black Deaf Advocates
National Court Reporters Association
National Fraternal Society of the Deaf
National Hispanic Council of Deaf and Hard of Hearing People
Registry of Interpreters for the Deaf, Inc.
Telecommunications for the Deaf, Inc.
World Institute on Disability



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Massachusetts

Tab D-1a

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